

**AGRICULTURAL LABOR RELATIONS BOARD  
CASE DIGEST  
1999 SUPPLEMENT**

- 102.01      "Application employees" of commercial producer of fertilizer products were agricultural employees at least when working in fields of ER's grower-customers, performing actual and direct farming (e.g., cultivation and tillage of the soil, fertilizing, and preparing seed beds). Thus, ALRB election will be held upon Union's filing of appropriate petition for certification.  
[ASSOCIATED-TAGLINE, INC., 25 ALRB No. 6](#)
- 205.01      Objection that union is not a labor organization under the ALRA because it already represents nonagricultural employees is dismissed on grounds there is no statutory requirement that a union represent agricultural employees exclusively. (Labor Code §1140.4(f).)  
[THE HESS COLLECTION WINERY, 25 ALRB No. 2](#)
- 314.09      Board will set aside election based on objection filed by an employer whose own agents provided a defective eligibility list, resulting in the failure of an outcome determinative number of voters to receive notice of the election, where the provision of the defective list was inadvertent, and not the result of bad faith, and where the employees were disenfranchised through no fault of their own.  
[COASTAL BERRY COMPANY, LLC, 25 ALRB No. 1](#)
- 314.17      Objection that Board agents committed misconduct by allowing pro-union supervisors to speak to employees lined up to vote dismissed where supervisors' presence was brief and not coercive and Board agents, once they discovered the men were supervisors, told them they could not vote.  
[THE HESS COLLECTION WINERY, 25 ALRB No. 2](#)
- 314.18      Board will set aside election based on objection filed by an employer whose own agents provided a defective eligibility list, resulting in the failure of an outcome determinative number of voters to receive

notice of the election, where the provision of the defective list was inadvertent, and not the result of bad faith, and where the employees were disenfranchised through no fault of their own.

[COASTAL BERRY COMPANY, LLC, 25 ALRB No. 1](#)

- 316.16 Where allegation in election objection is that supervisor assaulted union organizer in front of employees and later was arrested in their presence, it is necessary for the matter to go to hearing to determine the exact nature of the assault and the surrounding circumstances, including the relative level of dissemination of knowledge of the assault and arrest, before it would be possible to fully evaluate the ameliorative effect of the subsequent arrest.

[NASH DE CAMP CO., 25 ALRB No. 7](#)

- 316.18 It is not objectionable for an employer to simply allow employees to circulate a decertification petition on company time.

[NASH DE CAMP CO., 25 ALRB No. 7](#)

- 316.19 Objection alleging employer assistance in decertification effort by virtue of employees soliciting signatures on work time dismissed where supporting declarations fail to reflect facts indicating that these employees were either supervisors or would have been perceived as acting on behalf of the Employer.

[NASH DE CAMP CO., 25 ALRB No. 7](#)

- 317.08 Objection that supervisors engaged in pro-union coercive conduct in polling area dismissed where conduct was not shown to be coercive and could not have been outcome determinative because supervisors spoke to only several of the 20-30 employees waiting in line to vote, and union's margin of victory was 61.

[THE HESS COLLECTION WINERY, 25 ALRB No. 2](#)

- 319.01 Objection that bargaining unit should have been limited to unit agreed upon by parties dismissed where statute requires a statewide unit (Lab. Code § 1156.2) and objecting party failed to present evidence of why a different unit would be more appropriate.

[THE HESS COLLECTION WINERY, 25 ALRB No. 2](#)

- 324.01 Board will set aside election based on objection filed by an employer whose own agents provided a defective eligibility list, resulting in the failure of an outcome determinative number of voters to receive notice of the election, where the provision of the defective list was inadvertent, and not the result of bad faith, and where the employees were disenfranchised through no fault of their own.  
[COASTAL BERRY COMPANY, LLC, 25 ALRB No. 1](#)
- 324.02 Objection that cumulative effect of conduct of Board agents, Union agents and Union supporters interfered with fair election dismissed where none of the incidents individually stated a prima facie case.  
[THE HESS COLLECTION WINERY, 25 ALRB No. 2](#)
- 324.02 Objection that union is not a labor organization under the ALRA because it already represents nonagricultural employees is dismissed on grounds there is no statutory requirement that a union represent agricultural employees exclusively. (Labor Code §1140.4(f).)  
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- 324.02 Objection that Board agents committed misconduct by allowing pro-union supervisors to speak to employees lined up to vote dismissed where supervisors' presence was brief and not coercive and Board agents, once they discovered the men were supervisors, told them they could not vote.  
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- 324.02 Objection that bargaining unit should have been limited to unit agreed upon by parties dismissed where statute requires a statewide unit (Lab. Code § 1156.2) and objecting party failed to present evidence of why a different unit would be more appropriate.  
[THE HESS COLLECTION WINERY, 25 ALRB No. 2](#)

- 324.02 Union made prima facie showing that ER made unlawful promise of benefits when it assured employees that all benefit levels would remain in place if Union were vote out, since ER was impliedly promising to withdraw its current bargaining proposal to impose a premium cap on what it would pay toward employee health benefits, in exchange for a non-union vote by the employees. Thus, Union made prima facie showing that ER was not just assuring employees that it would maintain the status quo. (El Cid, Inc. (1976) 222 NLRB 1315.)  
[SAN CLEMENTE RANCH, LTD., 25 ALRB No.5](#)
- 324.02 Board affirmed ES's dismissal of Union's objection that ER violated rule established by NLRB in Peerless Plywood Company (1953) 107 NLRB 427 by conducting "captive audience" speeches on company time to assemblies of employees within 24 hours before scheduled time for election. Board found there was insufficient declaratory basis for setting the objection, and that it therefore need not reach the issue of whether the Peerless Plywood rule was applicable under the ALRA.  
[SAN CLEMENTE RANCH, LTD., 25 ALRB No.5](#)
- 325.04 Where a party fails to raise in its exceptions a material factual dispute which would warrant further investigation or hearing, or where conclusory statements in the brief filed in support of the exceptions are not supported by declarations or documentary evidence, the Board shall be entitled to rely on the challenged ballot report.  
[COASTAL BERRY CO., LLC, 25 ALRB No. 3](#)
- 405.02 Employer made unlawful implied threat of discharge in the event the employees again sought the assistance of a union when he told them "well, if the union is so strong, [next time] let them give you a job."  
[VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4](#)
- 414.01 Employer knowledge of protected activity is an essential element of a prima facie case. Knowledge of protected activity held by supervisors is imputed to the employer, unless it is shown that the decision-maker(s) of the adverse action were unaware of the activity at the time the decision was made.

Circumstances reflecting that it was unlikely that such knowledge was passed, along with credible denials of knowledge by decisionmakers, is sufficient to avoid imputation of knowledge.

[VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4](#)

- 417.04 Allegation of layoff and refusal to rehire due to union organizing activity dismissed where General Counsel failed to prove element of employer knowledge. Circumstances reflecting that it was unlikely that supervisors' knowledge of protected activity was passed to decisionmakers, along with credible denials of knowledge by decisionmakers, is sufficient to avoid imputation of knowledge to employer.

[VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4](#)

- 421.07 Employer knowledge of protected activity is an essential element of a prima facie case. Knowledge of protected activity held by supervisors is imputed to the employer, unless it is shown that the decision-maker(s) of the adverse action were unaware of the activity at the time the decision was made. Circumstances reflecting that it was unlikely that such knowledge was passed, along with credible denials of knowledge by decisionmakers, is sufficient to avoid imputation of knowledge.

[VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4](#)

- 458.01 The Board has wide discretion when determining the particular means by which the effects of an unfair labor practice are to be expunged. Moreover, the determination of remedies is within the domain of policy and therefore peculiarly a matter for the administrative body.

[VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4](#)

- 466.04 The Board's adherence to standard (non-economic) remedies has served to further the purposes and policies of the Act, and it is incumbent upon the respondent to demonstrate compelling reasons for departing from such remedies. Only where the violation is "isolated" or technical" might it be warranted to depart from standard remedies. (Citing *Nish Noroian Farms v. ALRB* (1984) 35 Cal.3d 726, at p. 747.)

[VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4](#)

600.02      Subject to relevancy objections, evidence relating to election objections that have been dismissed is admissible in order to elucidate the circumstances surrounding alleged conduct that is set for hearing.  
[NASH DE CAMP CO., 25 ALRB No. 7](#)